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SUBJECT: BENIN'S 2009 INVESTMENT CLIMATE STATEMENT

REF: STATE 123907

11. Please find below Embassy Cotonou's submission for Benin's 2009 Investment Climate Statement keyed to the topics in reftel.

Openness to Foreign Investment

12. President Yayi, in office since April 2006, aims to establish double digit economic growth in Benin before the end of his term in 2011 and is cognizant that he needs foreign investment to reach that goal. In an attempt to attract increased investment, President Yayi set up the Presidential Investment Council (PIC) in 2006. The objectives of this organization are to reinforce dialogue between the government and investors and speed the process of identification and implementation of reforms in order to improve the business environment. The PIC includes local and foreign private investors and government representatives.

13. The Government of Benin (GOB) officially favors and encourages foreign investment. Many opportunities for foreign investment have historically been linked to the privatization of state-owned enterprises, whose numbers have been reduced from 130 in 1980 to only four currently: SBEE (electricity), SONEB (Water), Benin Telecoms S.A (Telecommunications) and La Poste du Benin S.A (Post). Privatization of these final parastatals is slow-moving. However, the GOB achieved the privatization of cotton parastatal SONAPRA in 2008 after two unsuccessful attempts. Foreign companies are invited to bid on privatizations, and the bidding process is open and well-publicized.

14. The country's 1990 current investment code, revised and adopted in July 2008 authorizes the industrial sector to invest over USD 20 million (10 billion Francs CFA) in the country. The code establishes the conditions to obtain benefits under different investment regimes and grants extensive discretionary power to the Investment Control Commission at the Ministry of Commerce (MC). The MC has a "guichet unique" or one-stop shop to help dispense with unnecessary and time-consuming formalities facing investors. The GOB also set up the Business Registration Center in the Cotonou headquarters of the Benin Chamber of Commerce and Industry (CCIB) to facilitate the registration of new businesses. Using the center it is possible to register a new company within 2 weeks depending on the type of company.

15. Beninese law guarantees the right to own and transfer private property. The Beninese court system upholds the sanctity of contracts, but justice is often slow. Beninese courts process, on average, 8 percent of their civil cases each year.

¶16. To ease the company start-up process, investors are strongly encouraged to hire a local notary for the required assistance. Any American firm establishing an office in Benin should work with an established local partner of solid reputation and retain a competent Beninese attorney. A list of English-speaking lawyers and notaries is available from the Embassy's commercial section.

Conversion and Transfer Policies

¶17. Benin is a member of the West African Economic and Monetary Union (WAEMU). Benin's currency is the CFA franc, which is issued by the Central Bank of West African states (BCEAO). The CFA franc is pegged to the euro, and one US dollar presently equals about CFA 500 (November 2008).

¶18. Foreign exchange is readily available. Transfers exceeding 300,000 FCFA, approximately \$600, to a Western country other than France require approval from the BCEAO and the Ministry of Economy and Finance (MEF). There are no restrictions on the remittance of profit by companies which invest in Benin. The remittance of profits by individual resident investors is restricted in certain areas.

Expropriation and Compensation

¶19. The state guarantees under law that it will make no attempt to
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nationalize enterprises operating in Benin. The government does have the capacity to seize property by eminent domain. If the government does seize land, it is required to pay compensation to the owners.

Dispute Settlement

¶10. There have been few investment disputes, and there does not seem to be a discernible pattern in the causation of the disputes.

¶11. Benin is a member of the Organization for the Harmonization of African Business Law, known by its French acronym OHADA, and has adopted OHADA's universal commercial code to govern commercial disputes and bankruptcies. Benin is also a member of OHADA's Common Court of Justice and Arbitration and of the International Center for the Settlement of Investment Disputes (ICSID).

¶12. Benin does not maintain a commercial court system. Its civil courts handle commercial cases. In principle, Benin's courts will enforce foreign court judgments. A profound backlog of civil cases often results in a wait of two or more years before matters proceed to trial. Corruption, however, remains an impediment to the administration of justice. Businesses and other litigants routinely complain that corruption is particularly widespread at the trial court level, as well as at administrative hearings.

Performance Requirements and Incentives

¶13. Benin's government maintains a welcoming posture to foreign investors, and its 2008 Investment Code contains several incentives, in the form of tax reductions, for investors depending on the level and type of investment. Depending on the amount of the investment, investors do not have to pay taxes on profits, exports of finished products, or imports of industrial equipment. To obtain these benefits investors must meet several criteria including employing a minimum number of Beninese nationals, safeguarding the environment, and meeting nationally accepted accounting standards. The Investment Control Commission monitors companies that benefit from these provisions to ensure their compliance with the standards

required for receiving incentives.

Right to Private Ownership and Investment

¶14. The right to private ownership and investment exists in both theory and practice. Beninese law guarantees freedom of trade; choice of customers and suppliers; the right to move freely throughout the country; the right of foreign employees and their family members to leave the country; and freedom from government interference in the management of private enterprises.

Protection of Property Rights

¶15. Secured interests in real and personal property are recognized and enforced. Benin's legal system protects and facilitates acquisition and disposition of all property, including land, buildings and mortgages. As mentioned above, Benin's judicial system moves slowly and it may take a great deal of time to enforce a secured interest. Secured interests in property are registered with the Land Office in the Ministry of Finance.

¶16. International intellectual property agreements are not adequately enforced. Illegally reproduced DVDs containing pirated television shows and movies are sold openly. Fake and smuggled drugs are also available in the country's markets.

Transparency of the Regulatory System

¶17. While the government has adopted a transparent policy to foster free enterprise, red tape is often a problem, Benin slipped in the World Bank's 2007-2008 Doing Business ranking from 123 to 169 in the world and ranked 36 among the Sub-Saharan African countries behind Burkina Faso, Senegal, Cote d'Ivoire, Togo, and Mali, fellow members

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of the WAEMU. According to the same study, it takes a typical entrepreneur 332 days to secure the necessary licenses, approvals, and water and electricity connections to build a warehouse. The law governing commercial transactions conforms to the standards set by OHADA. Many labor laws remain holdovers from Benin's pre-1990 Marxist era and serve as impediments to private enterprise.

Efficient Capital Markets and Portfolio Investment

¶18. Government policy supports free financial markets in Benin, subject to regulatory oversight by the Ministry of Finance and Economy, and the Central Bank of West African States (BCEAO). Credit is allocated on market terms and foreign investors can get credit on the local market. Some observers claim the banking industry is not subject to effective mandatory regulation and some banks are not managed in a transparent fashion.

Political Violence

¶19. Benin is a democracy that has not known political violence in recent memory.

Corruption

¶20. President Yayi's government has demonstrated a high level of political will to combat corruption in Benin and has moved, in several high-profile cases, against corrupt government officials. Corruption remains a problem in the customs service, with government procurement, and in the judicial system. Investors may encounter

numerous attempts to solicit bribes as they begin operations in Benin.

¶21. While Benin lacks specific anti-corruption legislation, both the offer and receipt of a bribe are illegal in Benin and punishable by a penalty of up to ten years imprisonment. Benin is a signatory to the UN Convention against corruption. The newly established State Audit Office is responsible for preventing corruption in the public sector.

Bilateral Investment Agreements

¶22. Benin has bilateral investment agreements with France, Germany, and Great Britain. Benin does have a bilateral investment agreement with the United States.

OPIC and Other Investment Insurance Programs

¶23. The Overseas Private Investment Corporation (OPIC) offers financing programs to assist companies wishing to invest in developing countries, including Benin. OPIC insurance could be available to companies wishing to invest in Benin depending on the nature and extent of the investment. Potential investors should contact OPIC directly for further information at info@opic.gov.

Labor

¶24. The government adheres to international labor standards and fully recognizes the right to form unions and engage in collective bargaining. The government adopted a new labor code in 1998 aimed at increasing flexibility in hiring decisions, eliminating the need for prior authorization from the labor directorate for employee dismissal, and consolidating labor regulations currently dispersed among various texts. As a practical matter, however, Benin's labor practices contain many inefficient features reminiscent of the Marxist era. Foreign companies who dismiss employees for unsatisfactory performance are routinely sued. Child labor is widespread and, although it is making efforts, the GOB still needs to do more to suppress it.

¶25. The Constitution provides workers with the freedom to organize,

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join unions, meet, and strike, and the government usually respects these rights in practice. The labor force is engaged primarily in subsistence agriculture and other primary sector activities. Although approximately 75 percent of salaried employees belong to labor unions, the vast majority of union members are in the public sector with a much smaller percentage of workers in the private sector unionized. There are several union confederations, and unions generally are independent of government and political parties.

¶26. Strikes are permitted; however, the authorities can declare strikes illegal for stated causes (for example, threatening to disrupt social peace and order), and can require strikers to maintain minimum services.

Foreign Trade Zones/Free Ports

¶27. There is a free trade zone in the Port of Cotonou for imports destined for Benin's landlocked neighbors of Burkina Faso and Niger. Foreign importers have complained, however, that corruption in the Port of Cotonou makes it difficult to benefit from this.

¶28. The government plans on constructing an additional free trade industrial zone in Seme, located on Benin's coast east of Cotonou. Initially, the site will be 200 hectares in size, and then doubled

during its second phase.

Foreign Direct Investment Statistics

¶29. According to the United Nations Conference on Trade and Development (UNCTAD), Benin received 63 million dollars in foreign direct investment in 2006 (the latest statistics available).

¶30. Much of the foreign investment that has entered Benin since 1990 has been through the acquisition of interests in privatized companies. The principal foreign investors in Benin are from Lebanon, India, Germany, France and other Western countries. Chinese companies have also begun making investments in Benin. Foreign investors have purchased textile, cigarette, cement, and brewing companies in Benin.

¶31. Kerr-McGee, has a substantial investment presence in Benin. The Houston-based oil company has acquired rights to a deep-water block off Benin's coast and drilled two exploratory wells in March 2003.

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